Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09409/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 28th January 2019	**On 18th February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

Z R
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Haque (Solicitor)
For the Respondent: Mr C Avery (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. In a decision promulgated on 26th October 2018, First-tier Tribunal Judge Chana ("the judge") dismissed the appellant's appeal against a decision to refuse his protection claim. There was no appearance by the appellant at the hearing. At paragraphs 19 and 20, the judge addressed this matter and found that the appellant and his representatives were properly served with notice of the hearing. She referred to a letter from the representatives dated 25th September 2018, in which they stated that they had no instructions from the appellant to prepare for the hearing or to represent

him. She went on, in paragraph 20, as follows: "given that there was no explanation for the appellant's failure to attend the hearing, I proceeded with the appeal and I heard submissions from the Home Office Presenting Officer."

2. Permission to appeal was granted by a First-tier Tribunal Judge on 27th December 2018. He found that it was arguable that the judge should have decided a new adjournment application contained in the letter of 25th September. That letter referred to a letter from the appellant's GP dated 18th September 2018 and to what the judge granting permission described as "updated medical documents". Moreover, the contents of the letter of 25th September 2018 and the enclosures might properly be construed as giving an explanation for the appellant's failure to attend the hearing.

3. There was no rule 24 response.

Submissions on Error of Law

4. Mr Haque said that there were three grounds. First, the judge failed to follow the Procedure Rules in relation to the adjournment application contained in the letter dated 25th September 2018. She did not properly engage with the letter. Secondly, the judge assessed the evidence in an unreasonable way and gave inadequate reasons for her findings. The letter from the GP dated 18th September amounted to updated medical evidence. Thirdly, the judge failed to consider all the relevant circumstances and erred in finding that the appellant had given no explanation for his absence. It was obvious from the letters and medical documents that his ill-health was a likely explanation for his failure to attend.

5. Mr Avery said that the judge might have been in some difficulties because of the paucity of material before her. There was a letter from the appellant's solicitors dated 25th September but this stated that they had been unable to obtain instructions from their client. The judge was clearly aware of that letter and referred to it in the decision at paragraph 19. There appeared to be no timescale for the judge to work on, if the appeal were adjourned and relisted. In view of the scanty evidence, the failure to adjourn did not amount to a material error of law and as the letter of 25th September was written without instructions it might be doubted that it amounted technically to an adjournment application.

6. In a brief response, Mr Haque said that the judge decided to proceed with the hearing without considering the application for the adjournment. That was clearly an error.

Findings and Conclusions on Error of Law

7. It is clear that the judge had before her the letter from the appellant's solicitors dated 25th September 2018. This was written following an earlier application made on 20th September which was refused on 24th September. There were a number of

enclosures including "updated medical documents and medications". Whereas the adjournment application made by letter dated 20th September contained the appellant's account of medicines prescribed to him, the letter of 25th September was accompanied by notes and documents from the appellant's GP, confirming his medical history and identifying the medicines prescribed to him. To that limited extent at least, the evidence was indeed "updated".

8. As Mr Avery submitted, the letter of 25th September includes a clear statement by the appellant's solicitors that they were unable to obtain his instructions. This part of the letter is accurately summarised by the judge in paragraph 19 of the decision.

9. However, as they were entitled to do, the appellant's solicitors – still on the record as acting for him – made a further adjournment application. The letter dated 25th September is unambiguous in this respect. The adjournment application appears at the bottom of the first page of the letter and the very top of the second page.

10. The judge's summary of the letter makes no mention at all of the adjournment application. She was duty bound to decide that application, even though it appeared to have been made by the appellant's solicitors in circumstances where they had no clear instructions from him. The basis for the adjournment application was the state of the appellant's health. Notwithstanding the decision of the Tribunal to refuse an earlier adjournment application only the day before the appellant's solicitors wrote their letter, fairness required the application to be engaged with and decided.

11. Paragraphs 19 and 20 of the decision show that the judge decided to proceed with the appeal as "there was no explanation for the appellant's failure to attend". That falls short of deciding the adjournment application. The failure to decide it and to give reasons for either refusing an adjournment or adjourning to another day, amounts to a clear and material error of law.

12. The decision of the First-tier Tribunal contains a material error of law and must be set aside and remade. The parties were agreed that the appropriate venue is the First-tier Tribunal. As the error of law concerns procedural unfairness, that is plainly right.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law and is set aside. It will be remade in the First-tier Tribunal, before a judge other than First-tier Tribunal Judge Chana.

Signed Date

Deputy Upper Tribunal Judge R C Campbell

Anonymity

The First-tier Tribunal Judge made no anonymity direction. As this is a protection appeal and the appellant has shown an error of law in the First-tier Tribunal decision, I make an order prohibiting the publication of any material which might directly or indirectly lead members of the public to identify the appellant.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date

Deputy Upper Tribunal Judge R C Campbell